



**National Headquarters**

1130 17th Street, N.W. | Washington, D.C. 20036-4604 | tel 202.682.9400 | fax 202.682.1331  
[www.defenders.org](http://www.defenders.org)

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USDA Financial Assistance Programs Division  
Natural Resources Conservation Service  
Wildlife Habitat Incentives Program Comments  
P.O. 2890, Room 5237-S  
Washington, DC 20013

Submitted via rulemaking website at <http://www.regulations.gov>

March 17, 2009

Dear Director:

Defenders of Wildlife (Defenders) appreciates the opportunity to submit comments in regard to the Natural Resources Conservation Service's interim final rule for the administration of the Wildlife Habitat Incentives Program (WHIP), as passed in the 2008 Farm Bill (74 FR 2786-2800). As a non-profit conservation organization with more than 1 million members and activists, Defenders' goal is to preserve and restore our nation's native wildlife species and habitat. Defenders strongly supports the voluntary Farm Bill programs that provide farmers with the technical and financial resources that are so important to protecting and restoring wildlife habitats. We believe that the changes reflected in our comments are necessary to ensure that the program maximizes wildlife habitat benefits and we urge the NRCS to adopt our recommended changes in the final rule.

**Definitions**

*Summary of Defenders' comment:* Revise definitions of *Agricultural land* and *At-risk species*.

*Detailed comment:* Section 636.3 sets out definitions that apply throughout the rule. Defenders of Wildlife recommends amending two of the definitions to maximize potential wildlife benefits of the land. First, we recommend revising the definition of *Agricultural land*. Since the Farm Bill restricted the applicability of WHIP from a broad array of lands to private agricultural lands, nonindustrial private forest and Indian land, it is critical that the definition of *Agricultural land* be broadly applicable. We recommend that the rule adopt the definition of *Agricultural land* set forth in the Farm Credit Administration [12 Code of Federal Regulations 619.9025]:

Sec. 619.9025 *Agricultural land*. Land improved or unimproved which is devoted to or available for the production of crops and other products such as but not limited to fruits and timber or for the raising of livestock. [37 FR 11446, June 7, 1972. Redesignated at 55 FR 24888, June 19, 1990].

Furthermore, the rule should specify that all owners of private agricultural land and nonindustrial private forest land are eligible for the program.

For the definition of *At-risk species*, we recommend addition of language from the Memorandum of Understanding between NRCS, FWS and the Association of Fish and Wildlife Agencies:

At-risk species refers to plant and animal species that are listed as endangered or threatened under ESA, proposed or candidate for listing under ESA, likely to become candidates for listing in the near future; species listed as endangered or threatened (or similar classification) under State law; and state species of conservation concern (ie, those species identified by State Fish and wildlife agencies in State Wildlife Action Plans or other State agency conservation strategies and plans that include species identified as being in greatest need of conservation concern).

[[http://www.nrcs.usda.gov/NEWS/pdf/MOU\\_NRCS\\_FWS\\_AFWA.pdf](http://www.nrcs.usda.gov/NEWS/pdf/MOU_NRCS_FWS_AFWA.pdf)]

In addition, we recommend that the definition of “At-risk species” allow for inclusion of be identified by the Chief in consultation with the State Conservationist and with advice from FWS, NMFS, State Fish and Wildlife Agencies, and State Technical Committees because of population declines or other conservation concerns related to population vulnerability at the regional, state, or federal level, such as climate-sensitivity, catastrophic events, small or isolated populations, habitat degradation, or pest/pathogen outbreaks.

### **Program requirements**

*Summary of Defenders’ comment:* The rule should make explicit in states where stream bottoms are under private landowner jurisdiction, these should be considered eligible lands for WHIP enrollment.

*Detailed comment:* Section 636.4(b) lists lands eligible for enrollment in the WHIP program. As described in our comments above, Defenders of Wildlife recommends adoption of a broad definition of “Agricultural lands” in order to include a broad array of potential habitats in the program. We further recommend that in those states where stream bottoms are under private landowner jurisdiction, these should be considered eligible lands for WHIP enrollment. In some States, stream bottoms are under jurisdiction of the state or federal government and according to the rule are not eligible for WHIP funding. However, other states consider the stream bottom to be owned by the landowner and may be part of an agricultural operation. Given that the program’s priorities still include “protect, restore, develop, or enhance declining or important aquatic wildlife species’ habitats [§ 636.6(a)(4)], the rule offer explicit opportunities for the enrollment of aquatic habitats. Defenders believes this priority can be better accomplished if the rule points out the eligibility of stream bed habitat where state law recognizes private jurisdiction of these.

### **National Priorities and Priority for Enrollment**

*Summary of Defenders’ comment:* We support the WHIP national priorities with the expanded definition of at-risk species. We urge public notice and opportunity for input when the Chief sets regional or species-specific enrollment priorities.

*Detailed comment:* Defenders of Wildlife supports the WHIP priorities that NRCS identifies in Section 636.5(a). We commend the program’s focus on declining important habitats for native fish and wildlife, development of habitats to benefit at-risk species, reducing the negative impacts of invasive species, and protecting and enhancing aquatic species habitats. However, as discussed above, we strongly urge NRCS to adopt a broad definition of at-risk species that includes species and habitats identified in comprehensive state wildlife conservation strategies. We believe that with this amended definition, this listing of priorities is broad enough to cover the new statutory mandate to encourage the development of habitat for pollinators, and urge NRCS to preference native pollinator habitat development over habitat for managed pollinators. Further, we urge NRCS to evaluate its success at meeting the four priorities listed in § 636.5(a), and report to Congress and the public on whether

statutory changes in the 2008 Farm Bill enhance or impede the agency's ability to meet all of the listed priorities.

Section 636.6(a) and (b) give the Chief and State Conservationists, in consultation with the State Technical Committee, the authority to identify WHIP regions and habitats. Defenders of Wildlife urges that decisions on national priorities be published in the Federal Register for comment before promulgation, in order to solicit input from conservation organizations and the concerned public on the efficacy of selecting such priority areas, and to inform potentially eligible landowners well in advance of application deadlines. State conservationists should solicit the advice of wildlife conservation entities through the State Technical Committee in determining priorities within the state.

**Cost Share payments**

The provisions of § 636.7(a)(1) stipulate that NRCS will reduce its cost-share for projects that have other sources of federal assistance, except in certain cases where necessary to achieve the intended goals of the program. We recommend that NRCS grant waivers to allow up to 90% of the total cost share for these projects to come from Federal sources, particularly for projects that benefit at-risk species. Landowners should not be penalized for seeking other sources of support for important projects.

Thank you for your attention to the comments of Defenders of Wildlife. We look forward to working with you to advance the goals of the Wildlife Habitat Incentives Program.

Sincerely,

Aimee Delach  
Senior Conservation Science Associate  
[adelach@defenders.org](mailto:adelach@defenders.org)